Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
WILKES-BARRE/SCRANTON DIVISION, SCRANTON HEADQUARTERS

BILL GOODWIN CONSTRUCTION, LLC,	
Plaintiff,	Civil Action No. 3:13-cv-000157
WONDRA CONSTRUCTION, INC.; RENEWABLE ENERGY SYSTEMS AMERICAS, INC.; RENEWABLE CONSTRUCTION, INC.; RES AMERICAN CONSTRUCTION COMPANY, INC.; MEHOOPANY WIND ENERGY, LLC; BP WIND ENERGY NORTH AMERICA, INC.; and SEMPRA U.S. GAS & POWER;	Electronically Filed Judge James M. Munley
and	
ZURICH AMERICAN INSURANCE COMPANY; and FIDELITY AND DEPOSIT COMPANY OF MARYLAND.	
Defendants.	

DEFENDANT WONDRA CONSTRUCTION, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS PARTIAL MOTION TO DISMISS

Defendant, Wondra Construction, Inc. ("Wondra"), hereby moves pursuant to Fed. R. Civ. P. 12 (b)(6) to partially dismiss the Complaint of Bill Goodwin Construction, LLC (the "Plaintiff") for failure to state a claim against Wondra upon which relief can be granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

This action arises out of a wind farm construction project in Wyoming County, Pennsylvania. Defendant, RES America Construction, Inc. ("RES Construction") was the general contractor on the wind farm project (the "Project"). RES Construction entered into a subcontract with Wondra, by which Wondra would provide road-building and associated services for the Project. Wondra entered into an oral subcontract for material and hauling services with the Plaintiff. *See* Complaint ¶¶ 7-8.

In the early summer of this year, Wondra was contacted by a company that identified itself as one of Plaintiff's subcontractors. This company informed Wondra that it had not been paid by Plaintiff under the terms of its subcontract. After further investigation, Wondra came to believe that Plaintiff was delinquent in payments to numerous subcontractors on the Project, and that Plaintiff's debt to its subcontractors was in excess of the amount due to Plaintiff from Wondra. At the time of this discovery, Plaintiff had been fully paid by Wondra for its work on the

Project. However, in light of the fact that Plaintiff had failed to pay its subcontractors in an amount in excess of what was due to it on the remainder of the Project, Wondra decided it was prudent to withhold all remaining payments to Plaintiff. In an effort to protect itself, the Project, and Plaintiff's subcontractors, Wondra has withheld payment of $ 563,370.37 due for the work on the Project ("Goodwin Funds").

Three of Plaintiff's subcontractors have filed lawsuits against Plaintiff and Wondra in relation to the Project. *Latona Trucking, Inc., v. Bill Goodwin Construction Company, et. al.,* No. 2012-1018, (Wyoming Cty. Pa. Ct. Com. Pl. filed September 14, 2012); *J. Oliveri Trucking, LLC, v. Bill Goodwin Construction Company, et. al.*, No. 2012-1107 (Wyoming Cty. Pa. Ct. Com. Pl. filed October 9, 2012); *Stell Enterprises, Inc. v. Bill Goodwin Construction, LLC, et. al.*, No. 2012-13286 (Luzerne Cty. Pa. Ct. Com. Pl. filed August 31, 2012). Wondra filed a Petition for Interpleader in the Wyoming County Court of Common Pleas on October 22, 2012. The Petition for Interpleader was granted on November 16, 2012, and Wondra paid the $ 563,370.37 due on Plaintiff's subcontract into the Wyoming County Court of Common Pleas for disposition. Wondra's Petition for Interpleader is Attached hereto as Exhibit "A".

Plaintiff filed its Complaint on December 17, 2012 in the Court of Common

Pleas of Wyoming County, Pennsylvania. The defendants jointly removed the action to this Court on January 23, 2012.

II. LEGAL STANDARD

Under Rule 12(b)(6), the Court may dismiss an action if it fails to state a claim upon which relief can be granted. *See*, Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must allege facts that, if accepted as true, set out "sufficient factual matter" to show that the claim is facially plausible. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3rd Cir. 2009) (*quoting, Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). It is insufficient for a plaintiff to merely plead "a formulaic recitation of the elements of a cause of action." *Bell Atlantic Corp., v. Twombly*, 550 U.S. 544 (2007). In *Fowler*, the Third Circuit set out the analysis for evaluating a motion to dismiss:

> [W]hen presented with a motion to dismiss for failure to state a claim, district courts should conduct a two-part analysis. First, the factual and legal elements of a claim should be separated. The District Court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions. *Id.* Second, a District Court must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a "plausible claim for relief." *Id.* at 1950. In other words, a complaint must do more than allege the plaintiff's entitlement to relief.

Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3rd Cir. 2009) (*citing, Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). The Court's determination of whether the plaintiff has stated a "plausible claim for relief" comes after disregarding the legal conclusions included in the complaint.

III. ARGUMENT

A. Plaintiff's Complaint fails to plead sufficient facts to support a claim for breach of contract against Wondra, and This Court should abstain from ruling on a breach of contract claim pending in a state interpleader action

1. Plaintiff has failed to plead sufficient facts to support a claim for breach of contract against Wondra

Plaintiff has failed to state a claim for breach of contract upon which relief can be granted. To state a claim for a breach of contract under Pennsylvania law, a plaintiff must establish "(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract[,] and (3) resultant damages." *Corestate Bank v. Cutillo*, 723 A.2d 1053, 1058 (Pa. Super. Ct. 1999). In a motion to dismiss for failure to state a claim for breach of contract, the Court must determine whether plaintiff has established these elements by pleading "sufficient factual matter" to show that the claim is facially plausible. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3rd Cir. 2009) (*quoting, Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)).

Here, Plaintiff's complaint fails to sufficiently plead breach of contract against Wondra. Plaintiff's complaint states that the parties engaged in a series of transactions that were consistent with the existence of a contract. *See* Complaint ¶¶ 7-19. However, the complaint does not state the terms of the contract with any degree of specificity. The complaint does not state the terms of any mutual agreement, nor does it state the consideration exchanged. The pleading fails to set out "sufficient factual matter" to show that the claim is facially plausible. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3rd Cir. 2009) (*quoting, Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). Plaintiff's factually deficient claim for breach of contract should therefore be dismissed.

2. Assuming, *arguendo*, that there was a breach of contract, this Court should abstain as to the funds at issue in the state Interpleader action

This Court has the authority to abstain from ruling on Plaintiff's breach of contract claim as to the amount of funds that have been interpled in parallel state court proceedings. United States District Courts have the power to refrain from hearing cases that are duplicative of pending state court actions. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 717 (1996) (citing *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976)). The Third Circuit has held that:

> The *Colorado River* doctrine allows a federal court to abstain, either by staying or dismissing a pending federal action, when there is a parallel ongoing state court proceeding. . . . Whether abstention is appropriate is a two-part inquiry. The initial question is whether there is a parallel state proceeding that raises "substantially identical claims [and] nearly identical

> allegations and issues." If the proceedings are parallel, courts then look to a multi-factor test to determine whether "extraordinary circumstances" meriting abstention are present. . . . In determining whether an action presents "extraordinary circumstances" we consider six factors: "(1) [in an in rem case,] which court first assumed jurisdiction over [the] property; (2) the inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which jurisdiction was obtained; (5) whether federal or state law controls; and (6) whether the state court will adequately protect the interests of the parties."

Nationwide Mut. Fire Ins. Co. v. Hamilton, 571 F.3d 299, 307-08 (3d Cir. 2009) (internal citations omitted). Although no single factor is determinative, the desirability of avoiding piecemeal litigation was "by far the most important factor" in the *Colorado River* decision itself. Id. at 308 (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983)).

This Court should abstain from ruling on that portion of the damages sought by Plaintiff that is currently pending in two state actions, *Latona Trucking, Inc., v. Bill Goodwin Construction Company, et. al.,* No. 2012-1018, (Wyoming Cty. Pa. Ct. Com. Pl. filed September 14, 2012); *J. Oliveri Trucking, LLC, v. Bill Goodwin Construction Company, et. al.*, No. 2012-1107 (Wyoming Cty. Pa. Ct. Com. Pl. filed October 9, 2012). Both actions include claims by Plaintiff's subcontractors for delinquent payments related to work, materials, and services related to the Project. Wondra interpled $563,370.37 to the Court in satisfaction of any claims or possible claims that may be asserted against it by Plaintiff or its subcontractors related to work performed on the Project. The Wyoming County Court of Common Pleas has jurisdiction to determine the rights and interests to the $563,370.37 interpled by Wondra. In order to avoid piecemeal litigation, this Court should abstain from ruling on the parties' rights and liabilities for $563,370.37 of Plaintiff's claim.

B. Plaintiff's Claims for Unjust Enrichment and Quantum Meruit Should be Dismissed Because Plaintiff Alleges an Explicit Agreement Between the Parties

1. Plaintiff's claims for unjust enrichment and quantum meruit are the same cause of action in Pennsylvania

Pennsylvania law is quite clear that claims for unjust enrichment and quantum meruit are considered synonymous and require satisfaction of the elements of unjust enrichment. *Northeast Fence & Iron Works, Inc., v. Murphy Quigley Co., Inc.*, 933 A.2d 664, 667 (Pa. Super. Ct. 2007), *app. denied,* 947 A.2d 737 (Pa. 2008); *Goldsmith Associates, Inc. v. Del Frisco's Restaurant Group, LLC,* No. 09-1359, 2009 WL 3172752, at *2 (E.D. Pa. Oct. 1, 2009) ("Goldsmith's amended complaint asserts claims against the defendants under Counts separately labeled 'unjust enrichment' and 'quantum meruit.' In Pennsylvania, however, these labels are synonyms: a claim for unjust enrichment is the sameas a claim in quantum meruit.") Both causes of action require a plaintiff to satisfy the elements for unjust enrichment; as a result, in the instant case, Counts II and Counts III should be considered together and Plaintiff must prove the elements of unjust enrichment. *See Mitchell v.Moore,* 729 A.2d 1200, 1202 n.2 (Pa. Super. Ct. 1999) ("Therefore a claim of quantum meruit raises the issue of whether a party has been unjustly enriched, and in order to prove such a claim a party must successfully prove the elements of unjust enrichment[.]").

2. The fact that Plaintiff alleges a specific agreement between itself and the Defendant Wondra precludes Plaintiff's claim for unjust enrichment

The Plaintiff, in Count II of its Complaint claims unjust enrichment, alleging that Defendant Wondra received a benefit by way of Plaintiff's materials, work, equipment and services and that the Defendant Wondra is unjustly enriched by their receipt of the same. *See* Complaint ¶¶ 21-22. This claim is based upon Plaintiff's own allegation that the material, work,equipment, and services were provided by Plaintiff pursuant to various oral contracts between the parties. *See* Complaint ¶ 7. This claim is legally deficient because the aforementioned oral contracts govern the relationship with respect to any payments owed to Plaintiff by Defendant, Wondra. Although a party may plead unjust enrichment as an alternative to a breach of contract claim, *see Birchwood Lakes Community Assoc. v. Comis,* 442 A.2d 304, 308 (Pa.Super. 1982), "unjust enrichment is not applicable where the relationship among the parties is based on an express agreement." *See id.* Since the Plaintiff itself acknowledges the existence of "various oral contracts between the parties. *See* Complaint ¶ 7, then the terms of the agreement created by these oral contracts would bar any unjust enrichment claim.

To the extent that the Plaintiff believes it has received less than it was entitled to, its claim is contractual in nature and flows solely from the alleged oral contracts. Such claim was asserted by the Plaintiff against the Defendant, Wondra. Because the parties' relationship is governed by the alleged oral contracts, an unjust enrichment claim arising out of their relationship is precluded as a matter of law.

C. Plaintiff's Complaint fails to plead sufficient facts to support a claim for Promissory Estoppel against Wondra because the Complaint fails to allege a promise

An action for promissory estoppel in Pennsylvania must allege that "the promisor made a promise that he should have reasonably expected to induce action or forbearance on the part of the promisee". *Crouse v. Cyclops Indus.*, 745 A.2d 606, 610 (Pa. 2000). In analyzing whether a claim for promissory estoppel fulfills this requirement, a Court must accept as true all well-pleaded facts. However, a Court may disregard any legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

Here, in pleading its claim for Promissory Estoppel, Plaintiff has failed to allege any promise. Instead, Plaintiff makes a conclusory statement that purports to fulfill all the elements of promissory estoppel. *See* Complaint ¶¶ 29-33. Plaintiff does not state the nature of the promise, how it was made, and what Wondra allegedly promised to do. The pleading fails to set out "sufficient factual matter" to show that the claim is facially plausible. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3rd Cir. 2009) (*quoting, Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). Plaintiff's factually deficient claim for promissory estoppel should therefore be dismissed.

D. Plaintiff's Complaint fails to plead sufficient facts to support a claim for Account Stated against Wondra because the Complaint fails to allege the Wondra assented to the account

Under Pennsylvania law, an "account stated" is an account in writing, examined and accepted by both parties. See *Leinbach v. Wolle*, 211 Pa. 629 (1905). A party's retention of a statement of account for an unreasonably long time, without objection, may be a manifestation of assent. However, an account stated cannot exist where there is a dispute as to the accuracy or correctness of the debt. *Blue Mountain Environmental Management Corp., v. Chico's Enterprises, Inc.*, 190 Fed. Appx. 150 (3rd Cir. 2006).

Here, Plaintiff alleges that Wondra assented to the account as stated in the invoices attached to the Complaint by failing to object to the invoices. *See* Complaint ¶¶ 44-45. However, Wondra has objected to the account, and disputes the amount or correctness of the debt. Wondra's objections are a matter of public record, as they are contained in Wondra's Petition for Interpleader filed in the state court actions in Wyoming County, Pennsylvania. Given that Wondra's objection to the alleged debt is a matter of public record, Plaintiff's action for account stated fails as a matter of law. Plaintiff's claim for account stated should therefore be dismissed.

IV. CONCLUSION

For the reasons set forth above, counts I, II, III, IV, and VI of Plaintiff's Complaint should be dismissed in their entirety as to Defendant Wondra Construction, Inc.

Respectfully submitted,

Dated: February 28, 2013

/s/ Paul J. LaBelle
Paul J. LaBelle
Pa. I.D. 44579
Paul J. LaBelle & Associates, LLC
116 N. Washington Avenue
Suite 2-H
Scranton, PA 18503
Telephone: (570) 504-0880

Counsel for Defendant Wondra Construction, Inc.

EXHIBIT "A"

5

IN THE COURT OF COMMON PLEAS OF THE 44TH JUDICIAL DISTRICT
WYOMING COUNTY BRANCH – CIVIL DIVISION

LATONA TRUCKING, INC., **Plaintiff**	:	**NO. 2012-1018** ✓
VS.	:	
BILL GOODWIN CONSTRUCTION, COMPANY and WONDRA CONSTRUCTION, INC., **Defendants**	: :	
J. OLIVERI TRUCKING, LLC, **Plaintiff**	:	2012-1107
VS.	:	
BILL GOODWIN CONSTRUCTION, COMPANY and WONDRA CONSTRUCTION, INC., **Defendants**	: :	

FILED PROTHONOTARY WYOMING COUNTY, PA
2012 OCT 24 A 9:55

ORDER OF COURT

AND NOW, the 23rd day of October, 2012, in consideration of the Petition for Interpleader filed to the above matter by counsel for Wondra Construction, Inc.,

IT IS ORDERED that a Rule be issued upon the Defendant, Bill Goodwin Construction to show cause why the prayer for relief sought in the said Petition should not be granted.

RULE RETURNABLE the 16th day of November, 2012 at 11:00 o'clock, a.m., Courtroom No. 2, Wyoming County Courthouse, Tunkhannock, Pennsylvania, at which time hearing and/or argument will be held.

By the court,

Russell D. Shurtleff, President Judge

Paul J. Labelle, Esquire
w/notice to serve

5

IN THE COURT OF COMMON PLEAS OF THE 44TH JUDICIAL DISTRICT
WYOMING COUNTY BRANCH – CIVIL DIVISION

LATONA TRUCKING, INC., **Plaintiff**	:	**NO. 2012-1018**
VS.	:	
BILL GOODWIN CONSTRUCTION, COMPANY and WONDRA CONSTRUCTION, INC.,	:	
Defendants	:	
J. OLIVERI TRUCKING, LLC, **Plaintiff**	:	2012-1107
VS.	:	
BILL GOODWIN CONSTRUCTION, COMPANY and WONDRA CONSTRUCTION, INC.,	:	
Defendants	:	

FILED
PROTHONOTARY
WYOMING COUNTY, PA
2012 OCT 24 A 9:55

ORDER OF COURT

AND NOW, the 23rd day of October, 2012, in consideration of the Petition for Interpleader filed to the above matter by counsel for Wondra Construction, Inc.,

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By the court,

Russell D. Shurtleff, President Judge

Paul J. Labelle, Esquire
w/notice to serve

LATONA TRUCKING, INC.., Plaintiff vs. BILL GOODWIN CONSTRUCTION COMPANY; and WONDRA CONSTRUCTION, INC. Defendants	IN THE COURT OF COMMON PLEAS OF WYOMING COUNTY CIVIL ACTION - LAW No. 2012-1018
J. OLIVERI TRUCKING, LLC, Plaintiff vs. BILL GOODWIN CONSTRUCTION COMPANY; and WONDRA CONSTRUCTION, INC. Defendants.	IN THE COURT OF COMMON PLEAS OF WYOMING COUNTY CIVIL ACTION - LAW NO. 2012-1107

ORDER

AND NOW, this ____ day of ________________, upon consideration of Defendant Wondra Construction, Inc.'s Petition for Interpleader, it is hereby ORDERED:

a. Defendant Goodwin produce a full and comprehensive list of all its subcontractors on the Mehoopany Wind Farm project within fifteen (15) days and serve said list upon the parties to this action;

b. Defendant Goodwin notifies all of its subcontractors of the pendency of this action and that the Goodwin Funds have been paid into the Court;

c. the Prothonotary of Wyoming County accept payment of the Goodwin Funds to be deposited in escrow and held pending further order of the Court;

d. Wondra be discharged, released and exonerated from any liability or claims with respect to the Goodwin Funds and any other claims by Goodwin, Latona, Oliveri, or claimants to the Goodwin Funds;

e. Wondra be dismissed from the case and be granted their costs and attorney's fees from the Goodwin Funds, as may be allowed by law, and for other such relief as the Court deems just and proper.

____________________________, J.

Paul J. LaBelle & Associates, LLC
By: Paul J. LaBelle, Esq. - 44579
Ethan C. Wood, Esq. - 313259
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FILED
PROTHONOTARY
WYOMING COUNTY, PA
2012 OCT 22 A 11: 21

LATONA TRUCKING, INC.., Plaintiff vs. BILL GOODWIN CONSTRUCTION COMPANY; and WONDRA CONSTRUCTION, INC. Defendants	IN THE COURT OF COMMON PLEAS OF WYOMING COUNTY CIVIL ACTION - LAW No. 2012-1018
J. OLIVERI TRUCKING, LLC, Plaintiff vs. BILL GOODWIN CONSTRUCTION COMPANY; and WONDRA CONSTRUCTION, INC. Defendants.	IN THE COURT OF COMMON PLEAS OF WYOMING COUNTY CIVIL ACTION - LAW NO. 2012-1107

PETITION FOR INTERPLEADER

NOW COMES the Defendant, Wondra Construction, Inc. ("Wondra"), by and through Paul J. LaBelle & Associates, LLC, their attorneys, and files this Petition for Interpleader pursuant to Pa. R.C.P. 2302. In support of its petition, Wondra avers as follows:

1. Wondra is a subcontractor responsible for the construction of access roads on the Mehoopany Wind Farm project ("the Project"), located near Noxen, Pennsylvania.

2. BP Wind Energy North America ("BP Wind") is the owner of the Project.

3. Renewable Energy Systems Americas, Inc. ("RES") is the general contractor on the Project.

4. RES and Wondra entered into a subcontract whereby Wondra would build the roads for the Project.

5. Wondra and Defendant Bill Goodwin Construction Company ("Goodwin") entered into an oral subcontract whereby Goodwin would haul in and supply gravel and other road-building materials to Wondra at the price of $10.50 per ton of material.

6. Goodwin in turn subcontracted with numerous trucking and transport companies, including Plaintiffs, to perform the hauling work.

7. The portion of the Project involving Goodwin's subcontract was completed in July, 2012.

BASIS FOR INTERPLEADER

8. In the early summer of this year, Wondra was contacted by a company that identified itself as one of Goodwin's subcontractors, and informed Wondra that it had not been paid by Goodwin under the terms of its subcontract with Goodwin.

9. Due to further investigation, Wondra has reasonable cause to believe that Goodwin is experiencing financial difficulties, is delinquent in payments to numerous subcontractors on the Project, and that Goodwin's debt to its subcontractors on the Project is in excess of the amount due to Goodwin.

10. At the time of this discovery, Goodwin had been fully paid by Wondra for its work on the Project. However, in light of the fact that Goodwin had failed to pay its subcontractors in an amount in excess of what was due to Goodwin on the remainder of the Project, Wondra decided it was prudent to withhold all remaining payments to Goodwin. Wondra acknowledges a contractual obligation to pay the amount being withheld, but, in order to avoid double or multiple liability, seeks leave of the Court to pay such sums due into Court and to interplead the persons or companies known to Wondra who may assert some right, title or interest in the withheld funds.

11. Wondra has withheld payment of $ 563,370.37 due for the work on the Project ("Goodwin Funds").

12. Other than the plaintiffs , Latona Trucking, Inc. ("Latona") and J. Oliveri Trucking, LLC ("Oliveri"), Goodwin's subcontractors are not parties to this action.

13. Wondra believes and therefore avers that the following companies are subcontractors of Goodwin on the Project, and are owed money under their contracts with Goodwin for hauling work on the Project:

a. Stell Enterprises, Inc.

b. N&B Enterprises, Inc.

c. Latona Trucking, Inc.

d. Isaac Ventures

e. J. Oliveri Trucking, LLC

f. Lombardo Trucking

g. Factory Equipment Excavating

h. Superior Landscaping

i. GES

j. EFH Thomas

14. Wondra believes and therefore avers that there may be other Goodwin subcontractors who performed work on the Project and are not listed above.

15. Wondra is seeking to interplead the above-named subcontractors, and any other claimants subsequently discovered.

16. In light of the potential claims by parties to this action and/or other unknown persons or entities as well as the lack of information as to the validity of the claims asserted, Wondra is unable to determine which, if any, of the claims and anticipated claims should be paid. Wondra therefore seeks to pay the Goodwin Funds into the Court for a lawful determination of the interests of the parties thereto.

17. This petition is filed in good faith and not in collusion with the Plaintiff(s).

18. Wondra believes and therefore avers that Goodwin's subcontractors, being in a position identical to Latona and Oliveri, will file suit against Wondra as Latona and Oliveri have done.

19. Wondra has no claim or interest in the money withheld, and hereby petitions this Court to order that this money be paid to the Prothonotary of Wyoming County for distribution among the parties to this action and the interpleaded claimants.

20. Wondra does not admit to Plaintiff's claim against it, nor does Wondra subject itself to the independent liability of any claimant.

21. It is believed and therefore averred that RES has been fully paid by BP Wind for Goodwin's work on the Project.

22. Wondra has been fully paid by RES for Goodwin's work on the Project.

23. The amount of the Goodwin Funds represents the full and complete amount owed to Goodwin for its work on the Project. See Affidavit of Wondra Construction, attached hereto as Exhibit "A".

24. It is believed and therefore averred that there are no payment bonds, cash collateral or other reserve funds available for the redress of contractor and/or subcontractor claims.

WHEREFORE, Defendant Wondra Construction, Inc., respectfully requests this Honorable Court order that:

a. Defendant Goodwin produce a full and comprehensive list of all its subcontractors on the Mehoopany Wind Farm project;

b. Defendant Goodwin notifies all subcontractors of the pendency of this action and that the Goodwin Funds have been paid into the Court;

c. the Prothonotary of Wyoming County accept payment of the

Goodwin Funds to be held pending further order of the Court;

d. Wondra be discharged, released and exonerated from any liability or claims with respect to the Goodwin Funds and any other claims by Goodwin, Latona, Oliveri, or claimants to the Goodwin Funds;

e. Wondra be dismissed from the case and be granted their costs and attorney's fees from the Goodwin Funds, as may be allowed by law, and for other such relief as the Court deems just and proper.

Respectfully submitted,

Paul J. LaBelle & Associates, LLC

Paul J. LaBelle, Esquire

EXHIBIT “A”

STATE OF WISCONSIN)
) SS
COUNTY OF DODGE)

AFFIDAVIT OF WONDRA CONSTRUCTION, INC.

I, Roger Thimm, on behalf of Wondra Construction, Inc., do hereby depose and provide the following sworn statement pertaining to the foregoing Petition for Interpleader:

1. Wondra Construction, Inc. ("Wondra") is a subcontractor responsible for the construction of access roads on a the Mehoopany Wind Farm project ("the Project"), located near Noxen, Pennsylvania.

2. Wondra and Defendant Bill Goodwin Construction Company ("Goodwin") entered into an oral subcontract whereby Goodwin would haul in and supply gravel and other road-building materials to Wondra at the price of $10.50 per ton of material.

3. Goodwin in turn subcontracted with numerous trucking and transport companies to perform the hauling work.

4. Wondra has reasonable cause to believe that Goodwin is experiencing financial difficulties, is delinquent in payments to numerous subcontractors, and that Goodwin's debt to its subcontractors is in excess of the amount due to Goodwin.

5. Wondra has withheld payment to Goodwin of $ 563,370.37 due for the work on the Project ("Goodwin Funds").

6. Goodwin's work on the Project is complete.

7. All money owed by Wondra to Goodwin for the hauling work on the Project has either been paid directly to Goodwin, or withheld and paid into Court, under the terms of the Agreement between Wondra and Goodwin.

8. This amount represents the full amount due to Goodwin from Wondra for work performed on the Project.

I have provided the foregoing information knowingly, truthfully, and subject to the penalty of perjury.

Wondra Construction, Inc.

By: Roger T Thimm

Roger Thimm, Treasurer (title)

Dated: 10-17, 2012

Sworn to and subscribed to this 17th day of October, 2012

Christine R Erickson

Notary Public

expires 5-18-14

CHRISTINE R ERICKSON
NOTARY PUBLIC
STATE OF WISCONSIN

Verification

I, Roger Thimm, in my capacity as Treasurer of Wondra Construction, Inc., do hereby verify that the facts set forth in the foregoing Petition for Interpleader are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 10-17-2012

Roger Thimm

Roger Thimm, Treasurer (title)

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LATONA TRUCKING, INC..,	IN THE COURT OF COMMON PLEAS OF WYOMING COUNTY
Plaintiff	
vs.	CIVIL ACTION - LAW
BILL GOODWIN CONSTRUCTION COMPANY;	
and	No. 2012-1018
WONDRA CONSTRUCTION, INC.	
Defendants	

FILED PROTHONOTARY WYOMING COUNTY, PA 2012 OCT 22 A 11:21

J. OLIVERI TRUCKING, LLC,	IN THE COURT OF COMMON PLEAS OF WYOMING COUNTY
Plaintiff	
vs.	CIVIL ACTION - LAW
BILL GOODWIN CONSTRUCTION COMPANY;	
and	NO. 2012-1107
WONDRA CONSTRUCTION, INC.	
Defendants.	

CERTIFICATE OF SERVICE

I, Paul J. LaBelle, Esq., hereby certify that I have caused to be served on this day a Petition for Interpleader by mailing same, first class via regular mail:

Shawn R. Farrell, Esquire
Cohen Seglias Pallas Greenhall & Furman, P.C.
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John Dean, Esquire
Elliott Greenleaf & Dean, P.C.
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Scranton, PA 18503

Kenneth W. Pennington, Esq.
Latona Law, P.C.
Arena Hub Business Complex
275 Mundy Street, Ste. 102
Wilkes-Barre, PA 18702

BY: ______________________
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Scranton, PA 18503

Date: 10-19-2012

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October 25, 2012

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275 Mundy Street, Ste. 102
Wilkes-Barre, PA 18702

Re: Latona Construction, Inc. v. Bill Goodwin, et. al., Wyoming Cty. 2012-1018
J. Oliveri Construction, LLC v. Bill Goodwin, et. al., Wyoming Cty. 2012-1107
Petition for Interpleader

Dear Gentlemen:

Enclosed please find the Petition for Interpleader, Certificate of Service, and Order entered in the above-captioned matters.

Very truly yours,

Paul J. LaBelle

Paul J. LaBelle

enclosures

CERTIFICATE OF SERVICE

This is to certify that the foregoing **Defendant Wondra Construction, Inc.'s Memorandum of Law in support of its Partial Motion to** has been served via the Court's ECF system upon the following:

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Dated: February 28, 2013 /s/ Paul J. LaBelle